DALE R. LINDSEY

IBLA 73-247 Decided September 24, 1973

Appeal from an Alaska State Office, Bureau of Land Management, decision of December 8, 1972, rejecting headquarters site purchase applications AA-3017, AA-3070, and canceling the claims.

Affirmed in part, set aside in part and remanded.

Alaska: Headquarters Sites

The right of purchase under the headquarters site law is personal to the locator. A purchaser of a headquarters site gains no rights under his transferee's notice of location and he cannot avoid the effect of a withdrawal by his purchase where the seller had not earned equitable title and where the buyer had not filed a location notice or purchase application prior to the withdrawal.

APPEARANCES: Dale R. Lindsey, pro se.

OPINION BY MR. RITVO

Dale R. Lindsey has appealed from a decision of the Alaska State Office, Bureau of Land Management, dated December 8, 1972, rejecting his purchase applications for two separate headquarters sites, AA 3017 and 3070, which he had acquired by purchase from the original locators (entrymen).

In mid-1968, two individuals entered and located headquarters sites of approximately five acres each and contiguous to each other. Appellant states that the locators erected improvements and maintained the sites as contemplated by law, and on August 18, 1971, each locator conveyed the personal property on the claims to him. The lands in the claims were not described in the bill of sale. The very next day, August 19, appellant filed separate purchase applications for the two tracts. Each application recited that appellant had occupied the property since purchase. The decision below held

that rights under a headquarters site location are not assignable and that since the land was withdrawn by Public Land Order 4582 on January 23, 1969, and are now withdrawn, no location of a headquarters site could be effected after that date nor could the appellant file notices of location for them. It also held that the two headquarter site claims had been abandoned and canceled them.

The headquarters site law, 43 U.S.C. § 687a (1970), under which appellant seeks to purchase provides, in pertinent part:

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> That any citizen of the United States * * * who is himself engaged in trade, manufacture, or in productive industry may purchase one claim, not exceeding five acres, of unreserved public lands * * * and no person shall be permitted to purchase more than one tract except upon a showing of good faith and necessity satisfactory to the Secretary of the Interior.

The Act of April 29, 1950, 43 U.S.C. § 687a-1, further requires a claimant to file a notice of his claim in the land office within 90 days of the initiation of his claim, failing in which the claimant may not receive credit for occupancy prior to filing a notice or application to purchase. A purchase application must be filed within five years of location.

Appellant asserts that the State Office erred on several counts. He says that since the original claimants had complied with all the requirements of the headquarters site law, supra, their rights were vested and they cannot be deprived of them without a hearing. He then contends: (1) that all the requirements of the law have been met and that, as a result, the original claims may be transferred or (2) that possessory rights can be conveyed even prior to satisfaction of all requirements of the law. Next he urges that the several withdrawals were subject to valid existing rights, that the original locations were valid existing rights so that the lands were not withdrawn and, as a result, the withdrawals do not preclude his purchasing them. He contends that under the Board's ruling in C. Rick Houston, 5 IBLA 71 (1972), the withdrawals are not a bar to his purchasing a homesite. In conclusion he asks for a hearing on the ground that he has placed valuable improvements on the land, has used them as a fishing site, and has vested rights in them.

Appellant offers alternative bases for his appeal, the one founded on his own rights, the other on those derived from the original locators.

We first consider his own rights to initiate a headquarters site claim. As we have seen the lands were withdrawn from all forms of appropriation under the public land before he initiated his claim and have remained so withdrawn. Therefore, he could not have initiated a valid headquarters site claim in August 1971 and he gained no rights by filing his application to purchase the claim. Kennecott Corporation, 8 IBLA 21 79 I.D. 636 (1972), Leon A. Webster, 7 IBLA 333 (1972).

His contention that the original claims were valid existing rights which exempted the original locations from the successive withdrawals is without merit insofar as he asserts that they remained open to location by him. If the original claims were properly initiated prior to the first withdrawal and maintained thereafter they could have been carried to patent.

However, the lands were not exempted from the withdrawals, rather the withdrawal was only subject to them. It was effective to prevent the initiation of any other later claims. Kennecott Copper Corporation, supra. Such a later claim must stand on its own and can derive no right from a location made before the withdrawal impinged. Id.

Houston, supra, is of no help to appellant. It held only that Public Land Order 4962, 35 F.R. 18874 (December 11, 1970), amended Public Land Order 4582, 34 F.R. 1025 (January 23, 1969), to permit a claim initiated prior to December 18, 1968, to proceed to patent, all else being regular. Appellant's claim was initiated in August 1971.

Therefore, appellant has no rights in the land covered by the claims stemming from his own attempt to locate a headquarters site.

We now turn to his assertion that he is entitled to a patent for the claims as a transferee of original locators. Either of two distinct situations may exist when a headquarters site claimant attempts to transfer his interest in his claim. Since he has not received a patent, the legal title is in the United States. Nonetheless, a claimant may or may not have earned equitable title to the claim.

If he has not earned equitable title, a claimant cannot transfer to another any rights he may have acquired by settlement. Kennecott Copper Corporation, supra. See Ernest J. Ackerman, 70 I.D. 378, 380 (1963); James C. Forsling, 56 I.D. 281, 286 (1938). Therefore, if equitable title had not been earned, appellant can derive no benefits from the original locator's activities, but must look entirely to his own to justify his claim.

The situation is different when an entryman has earned equitable title. An entryman who has earned equitable title may transfer his rights to his entry. Cf. 43 U.S.C. §§ 162, 164, 174, 270 (1970); 43 CFR 2567.7(c).

Equitable title is earned when an entryman has met all the requirements of the statute and regulation and has filed final proof or its equivalent. Cf. Solicitor's Opinion, 65 I.D. 39, 44 (1958). The records of the original locations before us contain no application to purchase, as required by the regulation, 43 CFR 2563.1-1. It is plain for this reason, if not for others as well, that the appellant has not shown that the original locators earned equitable title. Accordingly, he has not shown that they had rights in the land they could transfer to him.

There remains appellant's contention that the original locator's rights cannot be canceled without a hearing. The State Office found that the original locations had been abandoned and canceled them. The record does not indicate that any notice was given to the original locators. Abandonment cannot be conclusively presumed from the fact that the original locators sold some improvements on the claims and some personal property, apparently used in connection with the claims.

A headquarters site claim, like other claims, depending on settlement, cannot be canceled without notice and an opportunity for a hearing for defects not appearing on the face of the record. Don E. Jonz, 5 IBLA 204 (1972). Therefore, the decision below is set aside insofar as it purported to cancel the original locations. 1/

Finally, appellant asserts that his use and improvement of the claims has earned him a right to a hearing. Since, as we have pointed out, he could not establish any interest in the land because it was withdrawn as to him, a condition apparent from the record, he has no right to a hearing nor are there any pertinent facts a hearing could develop. Don E. Jonz, supra. 2/

1/ We note that the five ! year period from the time of filing a notice location to the time a purchase application must be filed, with the requisite showings, under the Act of April 29, 1950, has now expired as to both claims. See also 43 CFR 2563.1-1(c).

2/ We note that appellant has shown no reason warranting any exception to the general statutory limitation to one headquarters site claim per individual. The rejection of his application for the reasons given above obviate any further discussion of this issue.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision below is affirmed in part, set aside in part and remanded for further proceedings consistent herewith.

Martin Ritvo
Member

We concur:

Joan B. Thompson
Member

Douglas E. Henriques
Member